

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
JULY 13, 2006 Session

CYNTHIA CROWE EGANEY v. RAYMOND EDWARD EGANEY, JR.

**Direct Appeal from the Chancery Court for Williamson County
No. 26572 Russ Heldman, Chancellor**

No. M2005-01755-COA-R3-CV - Filed on December 19, 2006

This case involves issues arising out of the parties' divorce. The trial court divided the parties' marital assets and debts, awarded Wife alimony *in futuro*, and ordered Husband to pay Wife's attorney's fees. Husband challenges the award of alimony, arguing that Wife is not relatively economically disadvantaged, or alternatively, that any award should be limited to rehabilitative alimony. Husband also challenges the trial court's division of marital property and its order requiring him to pay Wife's attorney's fees. For the following reasons, we affirm.

Tenn. R. App. P. 3; Appeal as of Right; Judgment of the Chancery Court Affirmed

ALAN E. HIGHERS, J., delivered the opinion of the court, in which W. FRANK CRAWFORD, P.J., W.S., and DAVID R. FARMER, J., joined.

J. Timothy Street, Franklin, TN, for Appellant

Virginia Lee Story, Franklin, TN, for Appellee

OPINION

I. FACTS & PROCEDURAL HISTORY

Cynthia Crowe Eganey ("Wife" or "Appellant") and Raymond Eganey ("Husband" or "Appellee") met in 1976 while both were working as clerks for the Federal Bureau of Investigation ("FBI"). Husband became an FBI agent in 1977, and the parties were married in 1978. They have two adult children, Brian and Jenna.

Wife has an associate's degree in secretarial sciences. Husband has a bachelor's degree in accounting and finance and worked for the FBI for approximately twenty-five years. During Husband's career in the FBI, the family frequently moved in order for Husband to fulfill his duties

as an agent and to obtain further training. The family lived in California, New York, Texas, and Washington, D.C., before moving to Tennessee in 1988. During this time, Wife held various part-time jobs but also stayed at home for several years to care for the couple's young children. Upon finally settling in Tennessee, Wife began working for an insurance company. She is currently an Office Manager there and works three days per week, earning \$1625.00 net income per month.

On October 15, 1999, Wife filed a complaint for divorce against Husband in the Chancery Court for Williamson County alleging inappropriate marital conduct and irreconcilable differences. Wife suspected Husband was having an extramarital affair. On July 14, 2000, the parties entered into an Agreed Order suspending the divorce action and attempted to reconcile.

In 2002, Husband retired from the FBI and joined OpSec Consultants, LLC, ("OpSec") a security company which also performs private investigative work. OpSec had recently been formed by other former FBI agents who were acquaintances of Husband. Wife also began working at OpSec two days per week as a bookkeeper.

Unfortunately, Husband and Wife again separated in November 2003. On September 24, 2004, Wife filed an amended complaint for divorce alleging that Husband had committed adultery. She requested that the court equitably divide the parties' assets and debts, and award her alimony and reasonable attorney's fees. At trial, Husband and Wife were the only witnesses called to testify. Wife testified that Husband was receiving numerous telephone calls from various females and stated that Husband had admitted having an extramarital affair. She also introduced Husband's suspicious hotel and casino receipts and a copy of an allegedly inappropriate e-mail to Husband from another woman. Husband denied having an affair and denied telling Wife that he had ever had an affair. He explained that his frequent travel during the year was necessary in order to "drum up business" with the casinos for OpSec and to care for his terminally ill parents in New Jersey. Husband acknowledged that over an eight-month period he had taken "twenty-plus trips at least" just to New Jersey, and that he also frequented Tunica, Las Vegas, and Metropolis.

The proof at trial established that Husband was receiving net income of \$4241.42 per month from his FBI pension. In addition, he typically billed his time at OpSec at \$120.00 per hour. However, because of certain circumstances at that time such as his frequent traveling, his current net income from OpSec was only about \$2100.00 per month.¹ In 2003, Husband's gross income from OpSec had been \$32,276.00, but in 2004 it had declined to \$28,263.00.

Wife had also worked for OpSec two days per week at varying rates of compensation. In 2004, Wife earned \$10,779.69 from her OpSec employment and \$24,802.00 from working at the insurance company. Wife had voluntarily terminated her employment with OpSec just prior to the date of trial because she felt uncomfortable continuing to work for Husband's business.

¹ Husband was actually receiving approximately \$2800.00 per month from OpSec (Exhibit 1, p.1), but he was not paying any quarterly taxes on his income. Therefore, his approximate net income was estimated at \$2100.00 once his income tax obligation was taken into account.

Consequently, her only source of income at that time was her earnings from the insurance company. However, she acknowledged that she would be able to seek further full-time employment at a probable rate of approximately \$15.00 per hour.

Husband and Wife owned two properties: a smaller home currently occupied by Wife and a larger home that Husband maintained and rented out to another family. The parties' marital debts included two separate mortgages on the parties' two houses and a second mortgage that covered both houses. There were also several bills to be paid relating to the house Husband maintained and rented out. The vehicle driven by each party was also encumbered by debt. Additionally, Husband and Wife had numerous credit card balances, and they owed two debts to the Internal Revenue Service ("IRS") for the 2002 and 2003 tax years.

The trial court expressly found Wife to be a highly credible witness, significantly more believable than Husband. Wife was awarded a divorce on the grounds of inappropriate marital conduct, which pretermitted the issue of adultery. The issues of alimony, property division, and the award of attorney's fees were taken under advisement, and the trial court's opinion was issued on June 3, 2005. The chancellor adopted certain exhibits submitted by Wife which estimated the value of marital assets and liabilities, as well as her proposed distribution of marital and separate property. Each party was assigned the mortgage and debts associated with the house, vehicle, and credit cards currently maintained by each. The second mortgage was divided equally between the parties. The two IRS debts from past years were allocated solely to Husband. The court also found relative economic disadvantage between the parties to necessitate an award of spousal support, but it determined that rehabilitation of Wife was not feasible to justify an award of rehabilitative alimony. Therefore, Wife was awarded alimony *in futuro* of \$1000.00 per month for a period of fifteen years, and \$500.00 per month thereafter. Husband was also ordered to pay Wife's attorney's fees and expenses in the amount of \$7600.00.

II. ISSUES PRESENTED

Husband has timely filed his notice of appeal and presents the following issues for review:

1. Whether the trial court erred in its division of the parties' marital debt;
2. Whether the trial court erred in the type, amount, and length of alimony awarded to Wife;
3. Whether the trial court erred in ordering Husband to pay Wife's attorney's fees.²

² It should be noted that Wife raised additional issues in her brief to this Court, specifically: "[w]hether the alimony awarded was insufficient to meet the needs of Wife of 27 years given Husband's ability to pay?" and "[w]hether the Wife should be awarded attorney's fees on appeal?" However, Wife's brief fails to reference the record or cite any authority in support of these arguments. In fact, Wife agreed at oral argument that the award of alimony *in futuro* was sufficient and properly set by the trial court.

Tenn. R. App. P. 27(a)(7) provides that "[t]he brief of the appellant shall contain . . . an argument . . . setting forth the contentions . . . with respect to the issues presented, and the reasons therefor . . . with citations to the authorities (continued...)

For the following reasons, we affirm the decision of the chancery court.

III. DISCUSSION

A. *Division of Marital Debt*

On appeal, Husband asserts that the trial court's division of the parties' marital property, specifically the marital debts, was inequitable. Husband disagrees with the court's valuation of the debts owed to the IRS, and, as a result, argues that he has been disproportionately burdened with a higher percentage of the parties' debts.

This Court's review of a trial court's marital property division is *de novo* upon the record, affording a presumption of correctness to the trial court's findings of fact. Tenn. R. App. P. 13(d); ***Dellinger v. Dellinger***, 958 S.W.2d 778, 780 (Tenn. Ct. App. 1997) (citing *Hass v. Knighton*, 676 S.W.2d 554, 555 (Tenn. 1984); *Dalton v. Dalton*, 858 S.W.2d 324, 327 (Tenn. Ct. App. 1993)). Trial courts are given wide discretion by appellate courts in the manner in which marital property is divided, and, therefore, its division of marital property is given great weight on appeal. ***Id.***, (citing *Wade v. Wade*, 897 S.W.2d 702, 715 (Tenn. Ct. App. 1994); *Wallace v. Wallace*, 733 S.W.2d 102, 106 (Tenn. Ct. App. 1987)). Dividing a marital estate is not a mechanical process; the goal is to fashion an equitable remedy by considering the factors set forth in Tenn. Code Ann. § 36-4-121(c). ***Kinard v. Kinard***, 986 S.W.2d 220, 230 (Tenn. Ct. App. 1998). A division of marital property is not rendered inequitable merely because it is not precisely equal. ***Id.***, (citing *Cohen v. Cohen*, 937 S.W.2d 823, 832 (Tenn. 1996); *Ellis v. Ellis*, 748 S.W.2d 424, 427 (Tenn. 1988)). Neither does a property division become inequitable simply because each party does not receive a share or portion of each marital asset. ***Id.***, (citing *Brown v. Brown*, 913 S.W.2d 163, 168 (Tenn. Ct. App. 1994)).

Husband first challenges the trial court's decision to adopt Wife's estimated valuation of the debts owed to the IRS. When a trial court values marital property subject to division, the parties themselves must come forward with competent valuation evidence. ***Watters v. Watters***, 959 S.W.2d 585, 589 (Tenn. Ct. App. 1997) (citing *Koch v. Koch*, 874 S.W.2d 571, 577 (Tenn. Ct. App. 1993)). The parties are bound by the evidence they present. ***Id.*** When the valuation evidence is conflicting, the court may place a value on the property that is within the range of values presented by all the

²(...continued)

and appropriate references to the record." Tenn. R. App. P. 27(b) states that the brief of the appellee shall conform to the same requirements, and if the appellee is also requesting relief, shall contain the issues and arguments involved. Because Wife presented no evidence that the alimony award should be increased, we decline to consider this issue. "Courts have routinely held that the failure to make appropriate references to the record and to cite relevant authority in the argument section of the brief as required by Rule 27(a)(7) constitutes a waiver of the issue." ***Bean v. Bean***, 40 S.W.3d 52, 55 (Tenn. Ct. App. 2000). An issue is deemed waived where it is simply raised without any argument regarding its merits. ***Id.*** at 56. This Court is under no duty to verify unsupported allegations in a party's brief, or for that matter, to consider issues raised but not argued in the brief. ***Id.***, (citing *Duchow v. Whalen*, 872 S.W.2d 692, 693 (Tenn. Ct. App. 1993)).

We note that Wife would not be entitled to her attorney's fees on appeal in any event because this case does not involve the enforcement of an order to pay alimony, nor do we consider Husband's appeal to have been frivolous.

relevant valuation evidence. *Id.* The decision of the value of a marital asset is a question of fact, and the trial court's valuation is presumed correct. *Id.*, (citing *Smith v. Smith*, 912 S.W.2d 155, 157 (Tenn. Ct. App. 1995)).

At trial, the only evidence introduced regarding the valuations of the IRS debts was each party's own estimation included in his or her respective income and expense statements. Wife estimated the couple's 2002 tax liability to be \$2200.00 and the debt for 2003 to be \$7300.00. Husband's valuation of the 2002 debt was also \$2200.00, but he estimated the 2003 debt to be \$8100.00. The trial court accepted the Exhibit filed by Wife as stating the accurate amounts due after expressly finding Wife to be a highly credible witness, "significantly more believable than" Husband. We cannot say that the trial court erred in adopting Wife's valuation of these marital debts. The court properly chose a value within the range of those presented in the parties' evidence. Husband could have offered additional proof of the debts' values in the trial court to support his own estimation.

Husband also raises an issue as to the parties' 2004 tax liabilities. Husband argues that his individual tax debt for 2004 should also be considered "marital debt," and, as such, equitably divided between the parties. In his income and expense statement which estimated the value of the parties' marital debts, Husband had included an additional estimated debt of \$8000.00 owed to the IRS for the 2004 tax year. Wife's income and expense statement made no mention of an IRS debt for 2004. In fact, Husband and Wife had been separated since November of 2003 and Wife had filed her 2004 taxes separately under "Head of Household" status. As previously noted, the chancellor's memorandum opinion incorporated by reference Wife's income and expense statement as setting forth the appropriate classification and division of marital and separate property. Consequently, the IRS debts for the tax years 2002 and 2003 were ultimately classified as marital property and were allocated to Husband, but the plan did not include a classification or allocation for any 2004 IRS debt owed by Husband. Husband now requests that this Court remand the case to the trial court for an equitable division of his 2004 IRS debt. Husband argues that, before requiring him to pay the entire 2004 tax debt, the trial court should have taken into consideration that Wife's decision to file separately caused his tax obligation to increase.

In the case at bar, the trial court should have classified the 2004 IRS debt as separate or marital property. "Marital debts" are all debts incurred by either or both spouses during the course of the marriage up to the date of the final divorce hearing. *Alford v. Alford*, 120 S.W.3d 810, 813 (Tenn. 2003). Unless a court has made provisions for the distribution of a couple's marital property in a decree of legal separation, a period of separation before divorce has no effect on the classification of debt as marital or separate. *Id.* at 813-814. Separated parties are still married, and although they live apart, the debts they incur during that time remain marital just as the property they acquire during that time is marital. *Id.* at 814. As such, the 2004 IRS debt incurred by Husband during the course of the marriage would be considered marital debt.

Because we have determined that this was a marital debt, we will next consider how the debt should have been allocated. Tennessee courts should consider four factors when equitably

distributing marital debt: (i) the debt's purpose; (ii) which party incurred the debt; (iii) which party benefitted from incurring the debt; and (iv) which party is best able to repay the debt. *Id.* By carefully considering these factors, the spouse who did not incur the debt will be protected from bearing responsibility for debts that are the result of personal excesses of the other spouse. *Id.* In this case, the factors weigh heavily in favor of allocating the 2004 IRS debt to Husband. This debt was incurred by Husband based on his untaxed income during the couple's period of separation. Wife did not receive any portion of Husband's untaxed earnings during this time. Wife's income was taxed each pay period, and she filed her taxes separately for that year. Also, Husband is best able to repay the debt, as the trial court expressly found Wife to be economically disadvantaged relative to Husband.

We do not consider the trial court's failure to expressly classify this property as "marital" to be fatal. In *Thomas v. Thomas*, No. W1999-00284-COA-R3-CV, slip op. at 12 (Tenn. Ct. App. Nov. 13, 2000), a trial court in a divorce action failed to specifically classify an asset as separate or marital property, and eventually awarded the asset to the wife as alimony. This Court concluded that the trial court's actions indicated an implicit classification of the property as separate property. *Id.* Similarly, in *Ausley v. Ausley*, No. M2004-01360-COA-R3-CV, slip op. at 3 (Tenn. Ct. App. Sept. 8, 2005), this Court inferred that a trial court had classified an asset as separate property when it did not divide the asset in the division of marital property, but awarded a portion as alimony. We noted that "although courts should expressly classify property before a final division, such classification may be inferred in certain instances." *Id.* We can infer from the evidence presented that the court considered the 2004 IRS debt, and, like the tax debts from the previous years, considered it to be marital property subject to division.

Neither do we find the lack of a specific allocation of the debt to Husband to necessitate a remand for an equitable division. We are willing to infer from the evidence and the trial court's ruling that the court considered Husband's 2004 tax obligation and intended that Husband would be responsible for paying the full debt. On cross-examination of Wife by Husband's counsel regarding Husband's future expenses, the chancellor heard testimony regarding Husband's 2004 tax liability:

Q: Do you know or do you have any idea of what his tax obligation for the year 2004 is?

...

A: I would say it would be similar to what it was in 2003, which I think was around \$7500.00.

...

Q: So *he* has that obligation to pay, does he not?

A: That's correct.

Q: That's not shown on here anywhere, is it?

A: No. When I filed those papers for you, I think it was prior to income taxes being filed.

...

Q: You want him to pay the tax liability for the years 2002, 2003 and 2004 ...

...

A: He has made the election and he made the choices over the years not to pay quarterly taxes. . . . But the income that I earn at my insurance job, I'm taxed every two weeks. Every time they write me a check, I'm taxed.

...

Q: . . . you want him to pay, *even though it's a joint obligation of both of you*. You want him to pay the entire tax liability for 2002, 2003 and 2004; isn't that right ma'am.

...

A: It would be about \$8000.00 or \$9000.00 for 2002 and '03.

Q: And then whatever is owed forward?

A: Right.

(emphasis added). We feel that this evidence is sufficient to indicate that the court considered Husband's 2004 IRS debt in its division of marital property and meant to allocate this obligation solely to Husband, in the same manner as the court allocated the IRS debts from the previous years.

After considering and rejecting Husband's specific challenges to the trial court's division of the marital debt, we do not find the overall distribution to be inequitable. The chancellor's decision was made based upon the appropriate factors set forth in Tenn. Code Ann. § 36-4-121(c) (2005). Husband argues that the general rule of property division is that an equitable distribution of property is an equal distribution, absent unusual circumstances. However, under Tennessee law, a trial court is authorized to "equitably divide . . . the marital property between the parties . . . in proportions as the court deems just." Tenn. Code Ann. § 36-4-121(a)(1) (2005). Tennessee courts have repeatedly emphasized that a division of marital property is not rendered inequitable merely because it is not exactly equal, *Kinard*, 986 S.W.2d at 230 (citing *Cohen v. Cohen*, 937 S.W.2d 823, 832 (Tenn. 1996); *Ellis v. Ellis*, 748 S.W.2d 424, 427 (Tenn. 1988)), or because each party does not receive a portion of each marital asset or debt. *Id.*, (citing *Brown v. Brown*, 913 S.W.2d 163, 168 (Tenn. Ct. App. 1994)).

B. Alimony

Appellant also asserts that the chancery court erred when it awarded Wife alimony *in futuro* of \$1000 per month for a period of 15 years, followed by \$500 per month thereafter. The trial court found that Wife was economically disadvantaged relative to Husband, and that rehabilitation as defined by Tenn. Code Ann. § 36-5-121(d)(2) (2005) was not feasible. Appellant contends that the evidence preponderates against a finding of relative economic disadvantage so that an award of alimony was improper, or alternatively, that Wife should only receive an award of rehabilitative alimony for a short time while she is seeking full-time employment.

1. Decision to Award Alimony

The trial court has broad discretion in determining the type, amount, and duration of alimony based upon the unique facts of each case. *Sullivan v. Sullivan*, 107 S.W.3d 507, 511 (Tenn. Ct. App. 2002) (citing *Kinard*, 986 S.W.2d at 234). “This Court is not inclined to alter a trial court's award of alimony absent a finding of an abuse of discretion.” *Id.*, (citing *Burlew v. Burlew*, 40 S.W.3d 465, 470 (Tenn. 2001)). We review discretionary decisions to determine: (1) whether the decisions are supported by the facts in evidence; (2) whether the trial court identified and applied the applicable legal principles; (3) whether the court's decisions are within the range of acceptable alternatives. *Id.* at 510 (citing *White v. Vanderbilt Univ.*, 21 S.W.3d 215, 223 (Tenn. Ct. App. 1999)). If the decision is within a range of acceptable alternatives, appellate courts will not substitute their decision for that of the trial court simply because the appellate court would have chosen a different alternative. *Id.*

First, we consider Appellant's contention that Wife is not economically disadvantaged to warrant an alimony award. Where one spouse has suffered economic detriment for the benefit of the marriage, the economically disadvantaged spouse's standard of living after the divorce should be reasonably comparable to the standard of living enjoyed during the marriage or to the post-divorce standard of living expected to be available to the other spouse, considering the relevant statutory factors and the equities between the parties. Tenn. Code Ann. § 36-5-121(c)(2) (2005). Of all the factors to be considered in making an alimony award, the most important two are the disadvantaged spouse's need and the obligor's ability to pay. *Lancaster v. Lancaster*, 671 S.W.2d 501, 503 (Tenn. Ct. App. 1984).

Husband compares his income and expenses with those of Wife in such a way that it does not appear that Wife is relatively disadvantaged. He attempts to show that Wife has no need and he has no ability to pay. The trial court equally divided Husband's pension plan between the parties so that each spouse would receive \$2245.00 per month net of taxes. Additionally, *at the time of trial*, Husband was receiving approximately \$2100.00 per month (net of his tax obligations) from OpSec, while Wife earned about \$1625.00 per month from her employment at the insurance company. In evaluating Wife's need, Husband has assigned additional income to Wife based on her ability to seek full-time employment beyond her current work at the insurance company. Wife did testify that she was willing and able to seek further employment. However, Husband does not impute any

additional income to himself although his income from OpSec admittedly declined in 2004 due to his frequent travels. Husband agreed at trial that 2004 was “kind of off” because he had family issues to address. He also testified that OpSec’s future outlook was promising and that he expected to make more money in the future. Still, in evaluating his own income, Husband stresses the need to focus on his *current* earnings on the record before us rather than his earning potential. In his view, the parties’ current earnings plus the additional income he does choose to impute to Wife, show that Wife is not economically disadvantaged.

The relevant factors set forth in the Tennessee Code require consideration of each party’s “relative earning *capacity* . . . and financial resources” as well as the “relative education and training of each party” in determining whether an order for alimony is appropriate. Tenn. Code Ann. § 36-5-121(i)(1)-(2) (2005) (emphasis added). We interpret these factors to require consideration of each party’s financial potential rather than a limited analysis of a party’s current yearly income. Because Husband has an accounting and finance degree and the respectable status of a retired FBI agent, it is reasonable to conclude that he has a far greater earning capacity when compared to Wife. Wife has worked at numerous part-time jobs throughout the marriage and only has an associate’s degree in secretarial sciences. While she may pursue a full-time job, her maximum compensation would likely be around \$15.00 per hour. Husband, on the other hand, bills his time at OpSec at approximately \$120.00 per hour. We conclude that Husband’s earning capacity is much greater than his current income figures indicate.

Husband also presents the parties’ expenses in a way that does not truly reflect economic realities.³ First, Husband refuses to include in his estimated income the rent that he receives from renting the house he was awarded in the division of marital property. He justifies this by noting the monthly mortgage and expenses required to maintain the property which exceed the amount of rent he receives. However, he does include the mortgage and expenses for the home in his list of estimated expenses for which he is responsible. If Husband refuses to declare rental income as “income,” he should not include rental expenses in his “expenses.”

Additionally, Husband argues that Wife cannot include certain monthly costs in her statement of “expenses” which correspond to marital debts assigned to Wife in the division of marital property. He claims that because she was ordered to pay these debts, she cannot now claim them as expenses to be considered as “need” in the alimony determination. However, as previously noted, he includes

³ Husband challenges Wife’s estimated expense of \$400.00 per month owed on their adult daughter Jenna’s student loans. This amount should not have been included in the determination of Wife’s “need” for alimony, because neither Husband nor Wife had a legal duty to support their child beyond age 18 and her graduation from high school. Tenn. Code Ann. § 34-1-102 (2005). However, Husband also included \$400.00 per month on *his* expense statement for Jenna’s loans, which was considered in determining his “ability to pay.” Therefore, we do not find Wife’s inclusion of the additional expense to have prejudiced the trial court’s alimony analysis.

It should also be noted that Husband raised an additional issue regarding Wife’s estimated monthly food expenses, claiming that her estimation is too high and arguably includes food for the couple’s children as well. However, we defer to the trial court’s factual determination of Wife’s expenses, as it accredited Wife’s testimony rather than Husband’s testimony.

in his “expenses” the mortgage payment and rental expenses that he was assigned in the division of marital debt, as well as his credit card bills and IRS debts. The relevant statute expressly lists as factors for consideration: “obligations . . . of each party” and “the provisions made with regard to the marital property.”⁴ Tenn. Code Ann. § 36-5-121(i)(1),(8) (2005). Therefore, in evaluating the obligations of the parties, the trial court properly considered the expenses associated with the marital debt assigned to each party.

Additional factors for consideration in determining whether an award of alimony is appropriate, relevant to these facts, include: the duration of the marriage; the age, physical and mental condition of each party; the standard of living of the parties established during the marriage; the extent to which each party made tangible and intangible contributions to the marriage and to the education, training, or increased earning power of the other party; and the relative fault of the parties. Tenn. Code Ann. § 36-5-121(i) (2005). Husband and Wife were 51 and 49 years old, respectively, at the time of trial. Their marriage lasted approximately twenty-six years. During the marriage, Wife was frequently required to leave jobs in order to move across the country with Husband to advance his career. Husband’s fault contributed to the breakdown of the marriage. In sum, it appears that an award of alimony is appropriate in this case, and the trial court’s decision is not an abuse of discretion such as to require this Court to substitute its judgment for that of the chancellor.

2. Propriety of Alimony *in futuro*

Appellant also contends that if any alimony award is appropriate, it should be limited to an award of rehabilitative alimony for a short period of time to allow Wife to secure full-time employment. Husband claims that Wife can rehabilitate herself by obtaining further employment in addition to her part-time work at the insurance company. We do not agree.

“To be rehabilitated means to achieve, with reasonable effort, an earning capacity that will permit the economically disadvantaged spouse’s standard of living after the divorce to be reasonably comparable to the standard of living enjoyed during the marriage, or to the post-divorce standard of living expected to be available to the other spouse, considering the relevant statutory factors and the equities between the parties.” Tenn. Code Ann. § 36-5-121(e)(1) (2005). Alimony *in futuro* may be awarded when the court finds that there is relative economic disadvantage and that rehabilitation is not feasible. Tenn. Code Ann. § 36-5-121(f)(1) (2005). At the time of trial, Wife was 49 years old and had secretarial experience and training. As discussed earlier, she had worked in only part-time jobs throughout the couple’s marriage so that she could care for the children and Husband could move frequently as required by his career. Husband had extensive experience as an FBI agent and was working in a private investigation business with other former agents. Husband typically bills

⁴ For example, in *Howell v. Howell*, No. W2001-01167-COA-R3-CV, slip op. at 6 (Tenn. Ct. App. Aug. 15, 2002), this Court affirmed a trial court’s decision not to award alimony to a wife, based in part on the fact that the wife was not apportioned any responsibility for the marital debts. Thus, it is proper for a court to consider debts allocated in the division of marital property in its alimony determination.

his time at OpSec at \$120.00 per hour while Wife has achieved a maximum earning potential of \$15.00 per hour. It was reasonable for the trial court to conclude that it would not be feasible for Wife to achieve, with reasonable effort, an earning capacity that would permit a standard of living reasonably comparable to that of Husband either during the marriage or after divorce. Therefore, an award of alimony *in futuro* was proper.

C. Attorney's Fees

On appeal, Husband also challenges the trial court's order requiring him to pay the full amount of Wife's attorney's fees. An award of attorney's fees is considered alimony *in solido*. *Koja v. Koja*, 42 S.W.3d 94, 98 (Tenn. Ct. App. 2000) (citing *Herrera v. Herrera*, 944 S.W.2d 379, 390 (Tenn. Ct. App.1996)). The decision of whether to award attorney's fees is within the sound discretion of the trial court and "will not be disturbed upon appeal unless the evidence preponderates against such a decision." *Id.* (citing Tenn. R. App. P. 13(d); *Kincaid v. Kincaid*, 912 S.W.2d 140, 144 (Tenn. Ct. App.1995)). Because an award of attorney's fees is akin to an award of alimony, the trial court should consider the same statutory factors to determine whether the award is appropriate. *Id.* These awards are appropriate when the spouse seeking them lacks sufficient funds to pay his or her own legal expenses, *Id.* (citing *Brown v. Brown*, 913 S.W.2d 163, 170 (Tenn. Ct. App. 1994); *Houghland v. Houghland*, 844 S.W.2d 619, 623 (Tenn. Ct. App. 1992); *Ingram v. Ingram*, 721 S.W.2d 262, 264 (Tenn. Ct. App. 1986)), or would be required to "deplete his or her resources in order to pay these expenses." *Id.* (citing *Brown*, 913 S.W.2d at 170; *Harwell v. Harwell*, 612 S.W.2d 182, 185 (Tenn. Ct. App. 1980)). Where one party has been awarded funds for maintenance and support and such funds are intended to provide the party with a source of future income, the party need not be required to pay legal expenses by using those assets that will provide for future income. *Id.* (citing *Batson v. Batson*, 769 S.W.2d 849, 862 (Tenn. Ct. App.1988)).

In this case, the trial court ordered Husband to pay all of Wife's attorney's fees and expenses, which amounted to \$7600.00. As previously discussed, an analysis of the relevant statutory factors leads to the conclusion that Wife is economically disadvantaged as compared to Husband. Wife continues to have need of assistance in paying her attorney's fees to avoid a depletion of the assets she will rely on for future support. While Wife has been awarded a sufficient amount of alimony to meet her usual needs, she should not be required to deplete those funds to pay for her legal expenses.

Husband argues that the trial court relied "almost exclusively" on one statutory factor, namely, his fault, in ordering him to pay Wife's attorney's fees. He claims that the trial court abused its discretion by not giving more weight to other factors: the parties' earning capacities, age and mental condition, standard of living during the marriage, and the division of marital property. Still, we find that the evidence does not preponderate against the trial court's decision to award Wife her attorney's fees as alimony *in solido*. The trial court's memorandum opinion states that the decision was made "focusing on [Wife's] need and [Husband's] ability to pay as well as all other statutory factors such as [Husband's] fault." The chancellor heard lengthy testimony relevant to the statutory factors, and we have no reason to believe he failed to take all the factors into consideration.

Therefore, we find that the trial court did not abuse its discretion by ordering Husband to pay Wife's attorney's fees.

V. CONCLUSION

For the aforementioned reasons, we affirm the decision of the chancery court. Costs of this appeal are taxed to Appellant, Raymond Edward Eganey, Jr., and his surety, for which execution may issue if necessary.

ALAN E. HIGHERS, JUDGE